

ORIGINAL

SEALED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FILED

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DEPUTY CLERK MS

UNITED STATES OF AMERICA, *et al. ex*
rel. JANE DOE, et al.,

Plaintiffs,

v.

ESSILOR INTERNATIONAL, *et al.*,

Defendants.

Civil Action No. 3:15-CV-2853-C

FILED IN SEALED CASE

JOINT STIPULATION OF DISMISSAL

1. On April 6, 2022, the United States of America (United States) filed its Notice of Partial Intervention for Purpose of Settlement in this action. The United States intervened only as to those civil claims brought under the False Claims Act (FCA) that overlapped with the following allegations (the Covered Conduct) in the underlying *qui tam* action: Defendants, through remunerative arrangements with eyecare providers—specifically, the Strategic Alliance, Practice Builder Loyalty, Practice Builder Elite, and Growth Financing programs (collectively, Threshold Programs) knowingly and willfully offered or paid unlawful remuneration to providers to induce those providers to order and purchase Defendants' products in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and Defendants knowingly caused eyecare providers to submit false claims to Medicare and Medicaid for Defendants' products that were tainted by kickbacks that Defendants offered or paid to providers enrolled in Threshold Programs between January 1, 2011 and December 31, 2016.

2. Pursuant to a Settlement Agreement executed by and amongst the United States, Relators, and Defendants on April 4, 2022, the United States and Relators, by and through their respective attorneys, hereby jointly stipulate and agree, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3729, *et seq.*, to entry of an order: (1) as to the United States, dismissing with prejudice any claims asserted in this action that are included within the Covered Conduct, and otherwise dismissing any other claims asserted against the Defendants within this action without prejudice; (2) as to the Relators, dismissing with prejudice any claims as to the Defendants; and (3) providing that the Court retain jurisdiction over any disputes that may arise regarding the Settlement Agreement referenced herein.

3. Pursuant to settlement agreements executed by and amongst the Settling States of Colorado, Connecticut, Florida, Hawaii, Indiana, Iowa, Minnesota, Nevada, New Jersey, New Mexico, New York, Tennessee, Texas, Wisconsin and the District of Columbia (the Settling States)¹ and Defendants on July 26, 2022 (State Settlement Agreements), the Settling States and Relators, by and through their respective attorneys, hereby jointly stipulate and agree, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, to entry of an order: (1) as to the Settling States, dismissing with prejudice any claims asserted in this action that are included within the Covered Conduct as that term is identified in Paragraph II.E. of the State Settlement Agreements, and otherwise

¹ The Named Plaintiff States of California, Georgia, Illinois, Michigan, Montana, New Hampshire and Massachusetts did not execute a settlement agreement with Defendants but do consent to a voluntary dismissal of this action without prejudice.

dismissing any other claims asserted against the Defendants within this action without prejudice and (2) as to the Relators, dismissing with prejudice any claims as to the Defendants.

4. Relators stipulate and agree that the Settlement Agreement and State Settlement Agreements referenced herein and the terms and conditions described therein are fair, adequate, and reasonable under all the circumstances of this case, that Relators will not challenge the Settlement Agreement or State Settlement Agreements pursuant to 31 U.S.C. § 3730(c)(2)(B), or applicable state law, and that Relators expressly waive the opportunity for a hearing on any objection to the settlement under 31 U.S.C. § 3730(c)(2)(B) or applicable state law.


5. The United States asks that, except for Relators' Complaint, the United States' Notice of Partial Intervention for Purpose of Settlement, this Joint Stipulation of Dismissal and accompanying Order, all other papers or orders on file in this matter (including, but not limited to, any applications filed by the United States for an extension of time in which to intervene or for any other reason) remain under seal and not be made public or served on defendants at any time. The United States makes this request because such materials discuss the content and extent of the United States' investigation, and they are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

6. A proposed order accompanies this Joint Stipulation.

Respectfully submitted,

BRIAN M. BOYNTON
PRINCIPAL DEPUTY ASSISTANT
ATTORNEY GENERAL

CHAD E. MEACHAM
UNITED STATES ATTORNEY


BRADEN CIVINS
Assistant United States Attorney
Texas Bar No. 24080836
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: 214-659-8600
Facsimile: 214-659-8807
Email: braden.civins@usdoj.gov

JAMIE A. YAVELBERG
EDWARD CROOKE
DIANA K. CIESLAK
Attorneys, Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, DC 20044
Telephone: 202-353-1336
Facsimile: 202-307-6364
Email: diana.k.cieslak@usdoj.gov

Attorneys for the United States of America

Colorado

PHILIP J. WEISER, Attorney General

By: /s/George A. Coddington
George Coddington

Colo. Atty. Reg. #18750
Senior Assistant Attorney General, MFCU
State of Colorado
1300 Broadway, 9th Floor
Denver, CO 80203
T: (720) 508-6686
F : (720) 508-6034
george.codding@coag.gov

Connecticut

WILLIAM TONG
Attorney General of Connecticut

By: /s/ Gregory K. O'Connell
Gregory K. O'Connell
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106-1774
gregory.o'connell@ct.gov

Florida

ASHLEY MOODY
Florida Attorney General

By: /s/ Cedell Ian Garland
Cedell Ian Garland
Deputy Director – Civil Enforcement
Florida Bar No: 58640
Office of the Attorney General
Medicaid Fraud Control Unit
PL-01, The Capitol
Tallahassee, FL 32399
Telephone: 850- 414-3904
Facsimile: 850- 410-0179
Email: Cedell.Garland@myfloridalegal.com

Hawaii

HOLLY T. SHIKADA 4017
Attorney General of Hawai'i

By: /s/ Landon M. M. Murata
LANDON M. M. MURATA 7985
Deputy Attorney General

Department of the Attorney General
State of Hawai'i
Medicaid Fraud Control Unit
707 Richards Street, Suite 402
Honolulu, Hawai'i 96813
Telephone: (808) 586-1058
Facsimile: (808) 586-1077

Indiana

STATE OF INDIANA
THEODORE E. ROKITA
Attorney General

By: /s/ Matthew Whitmire
Matthew Whitmire
Indiana State Bar No. 25866-55
Deputy Attorney General
Indiana Medicaid Fraud Control Unit
8720 Castle Creek Parkway East Drive, Suite 250
Indianapolis, Indiana 46250
P: (317) 915-5303
matthew.whitmire@atg.in.gov

Iowa

THOMAS J. MILLER
Attorney General of Iowa

By: /s/ Tricia Dieleman
Tricia Dieleman
Assistant Attorney General
Office of the Attorney General of Iowa
Medicaid Fraud Control Unit
321 East 12th Street
Lucas State Office Building, 3rd Floor
Des Moines, IA 50319-0083
Phone: (515) 281-8209
tricia.dieleman@dia.iowa.gov

Minnesota

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

By: /s/ Nicholas Wanka
Nicholas B. Wanka
Director – Medicaid Fraud Control Unit
Assistant Attorney General
Atty. Reg. No. 0391419
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 757-1394 (Voice)
(651) 296-1410 (TTY)

Nevada

STATE OF NEVADA
AARON D. FORD
Attorney General

By: /s/ Andrew Schulke
Andrew Schulke
Nevada State Bar No. 10218
Chief Deputy Attorney General
Office of the Attorney General
5175 S. Durango Drive
Las Vegas, Nevada 89113
P: (702) 486-3420
Aschulke@ag.nv.gov

New Jersey

ANDREW J. BRUCK
Acting Attorney General of New Jersey

By: /s/ Peter Sepulveda
Peter Sepulveda
Deputy Attorney General
Medicaid Fraud Control Unit
Office of the Attorney General of NJ
P.O. Box 094
Trenton, NJ 08625-0094
sepulvedap@njdcj.org

New Mexico

HECTOR BALDERAS
New Mexico Attorney General

By: /s/ Constance Tatham
Constance Tatham

Division Director
Medicaid Fraud Control Unit
Office of the Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508
ctatham@nmag.gov

New York

LETITIA JAMES
Attorney General

By: /s/ Alee Scott
Alee Scott
Chief of Civil Enforcement
Medicaid Fraud Control Unit
Office of the Attorney General of New York State
28 Liberty Street
New York, NY 10005
212-417-5322
Alee.Scott@ag.ny.gov

Tennessee

HERBERT H. SLATERY III
Attorney General and Reporter

By: /s/ Nate Casey
Nate Casey (TN BPR No. 31060)
Assistant Attorney General
Medicaid Fraud & Integrity Unit
Healthcare Division
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-2935
nate.casey@ag.tn.gov

Texas

KEN PAXTON
Attorney General of Texas

By: /s/ Lynne Kurtz-Citrin
Lynne Kurtz-Citrin
State Bar No. 24081425
Assistant Attorney General

Civil Medicaid Fraud Division
Office of the Attorney General for Texas
P.O. Box 12548
Austin, Texas 78711
Telephone: 512-936-1772
Facsimile: 512-936-0674
Email: [Lynne Kurtz-Citrin@oag.texas.gov](mailto:Lynne.Kurtz-Citrin@oag.texas.gov)

Wisconsin

JOSHUA L. KAUL
Attorney General of Wisconsin

By: /s/ Katie M. Wilson
KATIE M. WILSON
Assistant Attorney General
State Bar #1074344
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 224-9690
(608) 261-7991 (Fax)
wilsonkm@doj.state.wi.us

District of Columbia

By: /s/Jane Drummey
Jane Drummey, Esq.
Deputy Director – Medicaid Fraud Control Unit
Office of the Inspector General
Medicaid Fraud Control Unit
717 14th Street NW, Suite 430
Washington, DC 20005
(202) 727-2245

/s/ Joe Kendall

Joe Kendall

Texas Bar No. 11260700

The Kendall Law Group, LLP

3811 Turtle Creek Boulevard, Suite 1450

Dallas, Texas 75219

/s/ Christopher L. Nelson

Christopher L. Nelson

The Weiser Law Firm, P.C.

Four Tower Bridge

200 Barr Harbor Drive, Suite 400

West Conshohocken, PA 19428

Attorneys for Relators

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ORDER

Upon consideration of the United States of America's, the Settling States', and Relators' Joint Stipulation of Dismissal, and the terms of the April 4, 2022 Settlement Agreement referenced therein among the United States, Relators, and Defendants, and the July 26, 2022 State Settlement Agreements referenced therein among the Settling States, and Defendants, it is hereby ORDERED that: (1) with respect to the United States and the Settling States, the claims asserted in the action that are included within the Covered Conduct, as defined in the Joint Stipulation, the Settlement Agreement, and the State Settlement Agreements, are dismissed with prejudice and any other claims asserted against the Defendants within this action are dismissed without prejudice; (2) with respect to the States of California, Georgia, Illinois, Michigan, Montana, New Hampshire, and Massachusetts, the claims asserted in the action are dismissed without prejudice; (3) with respect to Relators, the claims asserted in this action are dismissed with prejudice; and, (4) this Court retains jurisdiction over any disputes that may arise

regarding the April 4, 2022 Settlement Agreement referenced herein and in the Joint Stipulation;

IT IS FURTHER ORDERED that the Relators' Complaint, the United States' Notice of Partial Intervention for Purpose of Settlement, the Joint Stipulation of Dismissal and this Order, be unsealed; and,

IT IS FURTHER ORDERED that all other sealed papers or orders on file in this matter shall remain under seal.

SO ORDERED.

Dated this _____ day of _____, 2022.

HONORABLE SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE